



# GATEWAY REVIEW

## Justification Assessment

**Purpose:** To request that the Independent Planning Commission review the Gateway determination of the subject planning proposal, consider the information provided by Council and proponent, and provide advice regarding the merit of the review request.

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| Dept. Ref. No:          | GR-2024-13 / IRF25/636   |   |
| LGA                     | Waverley   |   |
| LEP to be Amended:      | Waverley Local Environmental Plan (LEP) 2012   |   |
| Address/<br>Location:   | 50 Botany Street, Bondi Junction (Lot 1 in DP619753)   |   |
| Proposal:               | Planning proposal PP-2024-104 seeks to rezone part of 50 Botany Street, Bondi Junction, from SP2 Infrastructure (Telecommunications) to R3 Medium Density Residential, introduce a minimum lot size control of 232m <sup>2</sup> , remove a redundant local heritage listing, and permit the collection of affordable housing contributions. |   |
| Review request made by: | <input checked="" type="checkbox"/> A proponent  |   |
| Reason for review:      | <input type="checkbox"/>   |   |
|                         | <input type="checkbox"/>   |   |
|                         | <input checked="" type="checkbox"/>  | A determination has been made that has imposed requirements (other than consultation requirements) or makes variations to the proposal that the proponent or council thinks should be reconsidered. |

### Background information

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| Details of the planning proposal | <p><b>The proposal (PP-2024-104)</b></p> <p>The planning proposal (<b>Attachment Proposal A, A1 to A8</b>) seeks to facilitate redevelopment of a decommissioned Telstra site at 50 Botany Street, Bondi Junction for residential purposes by amending the Waverley LEP 2012 to:</p> <ul style="list-style-type: none"><li>• rezone part of the site from SP2 Infrastructure (Telecommunications) to R3 Medium Density Residential</li><li>• introduce a minimum lot size control of 232m<sup>2</sup> to part of the site</li><li>• remove a redundant local heritage listing (Item I166) from the site</li><li>• permit the collection of affordable housing contributions and set a rate of 9.27% for the site in accordance with the Waverley Affordable Housing Contribution Scheme 2023.</li></ul> <p>The proposal is supported by a development concept for 7 terrace style homes.</p> <p><b>Site description</b></p> |
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The planning proposal applies to land at 50 Botany Street, Bondi Junction (Lot 1 in DP 619753). The site has an area of approximately 1,364m<sup>2</sup> and has street frontages to Botany Street and Council Street (**Figure 1**). It is located approximately 1.2km south-west of Bondi Junction Train Station.



**Figure 1. Subject site (Source: Sixmaps, 2024)**

This site is zoned SP2 (Telecommunications), with a maximum height control of 12.5m and FSR of 0.75:1 under the Waverley LEP 2012.

The site was previously owned by Telstra and was sold to Bondi Exchange Pty Ltd in 2023. The telecommunications tower on the site was removed in early 2024, and a smaller 'monopole' telecommunications structure is now located on the eastern part of the site (DA-79/2020 & DA-79/2020/A). The remainder of the site is occupied by a decommissioned former Telstra building, a small Ausgrid substation and trees and vegetation.

The site is located within the Botany Street Heritage Conservation Area and the now demolished Telstra telecommunications tower is still listed as a local heritage item (I166 Telecommunication tower) on the site.

The site is located within an established urban area which is serviced by infrastructure and utilities, that is not known to contain any critical habitat or threatened species, populations or ecological communities, and is not identified in the proposal as being flood affected. It is located in proximity to existing rail services on the T4 Eastern Suburbs Line and frequent bus services operating along the adjacent streets.

The Waverley DCP 2022 identifies the site in the biodiversity habitat corridor that links Centennial Park, Queens Park, Waverley Park, Bronte and Tamarama Beach.

Existing development immediately surrounding the site is generally characterised by low and medium density residential uses, the Uniting War Memorial Hospital, St Marys Anglican Church and ancillary community services located nearby to the south and east.

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| <b>Reasons for Gateway determination</b> | <p>On 11 October 2024, a Gateway determination (<b>Attachment Gateway</b>) was issued by the Director, Local Planning (North, East and Central Coast), as delegate of the Minister for Planning and Public Spaces, who determined that the planning proposal should proceed subject to conditions for the following reasons:</p> <ul style="list-style-type: none"> <li>• The proposal is generally consistent with the relevant overarching state and local strategic plans and policies and ministerial directions, and inconsistencies have been adequately justified.</li> <li>• The proposal will facilitate residential development on underutilised land and will support ongoing use of the telecommunications tower on the eastern part of the site.</li> <li>• The proposal will support the provision of affordable housing in the Waverley LGA.</li> <li>• The proposal will not result in any adverse environmental, social or economic impact.</li> </ul> <p>A Gateway condition (1(a)) required that the planning proposal was updated prior to consultation to include inclusion of a plain English explanation of how the provision will apply to the site and a disclaimer that final wording will be subject to Parliamentary Counsel drafting. This is an administrative condition to provide abundant clarity during public exhibition about how the proposed affordable housing contribution clause and supporting schedule would apply to the subject site.</p> <p>The Gateway determination authorised Council to exercise the functions of the local plan-making authority (LPMA) for this proposal as it relates to a local planning matter.</p> <p>The Department's Gateway Assessment Report is attached (<b>Attachment Gateway Report</b>).</p> |
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## Proponent's views

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| <b>Details of justification</b> | <p>On 29 November 2024 Willowtree Planning Pty Ltd submitted a formal request (GR-2024-13) on behalf of the proponent and landowner, Bondi Exchange Pty Ltd, for review of the Gateway determination for planning proposal PP-2024-104, citing objections to the lawfulness and quantum of the proposed affordable housing contribution (<b>Attachment Request A</b>).</p> <p>The Gateway Review request was submitted to the Department within the timeframe specified in the LEP Making Guideline (August 2023). It is noted that additional information was submitted on 13, 17 and 20 December 2024 (<b>Attachments Request B, C and D</b>). This included:</p> <ul style="list-style-type: none"> <li>• The proponent's response to the Gateway review criteria, reasons for requesting the Gateway review, and proposed alteration to the Gateway determination that is being sought.</li> <li>• A completed Gateway Review Application form.</li> </ul> <p>On 21 February 2025 the Department received a letter from Mills Oakley (obo of Bondi Exchange Pty Ltd) requesting the Department reconsider its decision to deny the proponent's Gateway review request (GR-2024-13) and the additional information provide to justify why a Gateway alteration is warranted (<b>Attachment Additional Information</b>).</p> <p>In summary, the Gateway review request seeks the alteration of Condition 1(a) of the Gateway determination, to require that the proposed affordable housing contribution provision is removed from the planning proposal, as shown in bold in <b>Table 1</b> below. It was also requested that Council not be authorised to exercise the functions of LPMA.</p> |
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**Table 1 Gateway Review Request - Proposed alteration of Gateway condition 1(a)**

| Current Gateway condition  | Proposed altered Gateway condition   |
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| <p>1. Prior to exhibition, the proposal is required to be updated to:</p> <p>(a) Provide a plain English explanation of how the affordable housing contribution additional local provision will apply to the site and include a disclaimer that final wording will be subject to Parliamentary Counsel drafting.</p> | <p>1. Prior to exhibition, the proposal is required to be updated to:</p> <p>(a) exclude the affordable housing contribution additional local provision.</p> |

The Gateway review request reiterated the strategic and site-specific merits of the proposal, noting that the proposal meets the relevant objectives and planning priorities of the Greater Sydney Region Plan and Eastern City District Plan as it seeks to provide a greater housing supply in a highly accessible location that benefits from proximity to jobs, services, active and public transport links; and opportunity to retain and enhance the quality of landscaping on site.

Key points in the justification for the Gateway review include:

- The proponent's request for a planning proposal as submitted to Council did not seek to amend the LEP to include a new site-specific provision for the payment of an affordable housing contribution (AHC). Rather, the proponent anticipates the making of a monetary contribution via a planning agreement.
- The quantum of affordable housing contribution proposed is unreasonable and materially misrepresented and would impose a rate almost 40% higher than the rate identified in Council's feasibility report and place an arbitrary and onerous financial burden on the future development of the site.

The representative of the proponent contends that the affordable housing contribution rate proposed by Council is unreasonable and that:

*"Council has mis-characterised the PP in the reports to the Panel and Department by making it appear that AHC mechanism which is sought to be inserted into the WLEP was proposed by the Proponent. Council's proposed AHC mechanism in the Proponent's PP has been rejected on two previous occasions by the Department (see PP- 2021-3131 and PP-2023-2221)"*

*"the Proponent's PP does not seek to amend the Waverley Local Environmental Plan 2012 ('WLEP') by way of including a new site-specific provision for the payment of an affordable housing contribution ('AHC')".*

Mills Oakley requested the Department progress the Gateway review request (GR-2024-13) to the Independent Planning Commissioner (IPC) for its consideration, for the reasons summarised below:

- Mills Oakley is of the view the Department has overreached its administrative function as part of the proponent's request for review of the Gateway, as there is nothing in the Guideline or Act that provides Department power to deny a request for review of a Gateway determination based on the merits of the justification provided within the request.
- Mills Oakley contends that there is nothing in the Guideline that supports the Department's position which claim that some conditions imposed as part of a

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|                          | <p>Gateway decision (e.g. administrative conditions) are not able to be reviewed and that the Guideline expressly provides that a proponent and/or council may request a review of any condition, without limitation, imposed as part of a gateway determination if those conditions are considered ‘inappropriate’.</p> <ul style="list-style-type: none"> <li>• A departure from the Guideline without notice to the Proponent amounts to a breach of procedural fairness in the handling of the Proponent’s request for a review of the Gateway Determination.</li> </ul> <p>The documents submitted by the proponents to support the Gateway Review request are provided in <b>Attachments Request A to D and Attachment Additional Information</b>.</p>  |
| <b>Material provided</b> | <p><u>Gateway review request and additional information submitted by proponent</u></p> <p>Willowtree Planning and Mills Oakley provided the following documents (obo Bondi Exchange Pty Ltd) in support of the Gateway Review Request (GR-2024-13):</p> <ul style="list-style-type: none"> <li>• Gateway review request from Willowtree Planning Pty Ltd – 50 Botany Street, Bondi Junction – 29 November 2024 (<b>Attachment Request A</b>)</li> <li>• Additional information from Willowtree Planning Pty Ltd – 13 December 2024 (<b>Attachment Request B</b>)</li> <li>• Further additional information from Willowtree Planning Pty Ltd – 17 December 2024 (<b>Attachment Request C</b>)</li> <li>• Gateway Determination Review Application Form – 20 December 2024 (<b>Attachment Request D</b>)</li> <li>• Gateway Review Request Additional Information submitted by Mills Oakley – 21 February 2025 (<b>Attachment Additional Information</b>).</li> </ul> <p><u>Waverley Council Submission to IPC &amp; previous Council reports on the proposal</u></p> <p>Waverley Council staff submitted a response to the Gateway review request (GR-2024-13) to the Department on 2 April 2025, which included:</p> <ul style="list-style-type: none"> <li>• Cover letter to submission on 50 Botany Street Planning Proposal Gateway Review to IPC (<b>Attachment Council Submission A</b>).</li> <li>• Waverley Council submission on 50 Botany Street Planning Proposal Gateway Review to IPC (<b>Attachment Council Submission B</b>).</li> <li>• Post exhibition report to Waverley Council – Strategic Planning and Development Committee Meeting Agenda–<i>Planning Proposal - 50 Botany Street, Bondi Junction - Post-Exhibition (PP2/2024)</i> - 4 March 2025 (<b>Attachment Council Agenda</b>).</li> <li>• Post exhibition decision of Waverley Council – Strategic Planning and Development Committee Meeting Minutes –<i>Planning Proposal - 50 Botany Street, Bondi Junction - Post-Exhibition (PP2/2024)</i> - 4 March 2025 (<b>Attachment Council Resolution</b>).</li> </ul> <p><u>The planning proposal prepared and submitted by Waverley Council</u></p> <p>The planning proposal package (PP-2024-104) as submitted by Waverley Council to DPHI on 22 August 2024 for Gateway assessment included:</p> <ul style="list-style-type: none"> <li>• Planning Proposal (August 2024) (<b>Attachment Proposal A</b>) <ul style="list-style-type: none"> <li>- Proponent Report (Willowtree Planning Pty Ltd, 19 January 2024) (<b>Attachment Proposal A1</b>)</li> <li>- Urban Design Analysis (Smith &amp; Tzannes, 22 December 2023) (<b>Attachment Proposal A2</b>)</li> <li>- Social &amp; Community Needs Assessment (Judith Stubb &amp; Associates, 28 March 2024) (<b>Attachment Proposal A3</b>)</li> </ul> </li> </ul> |

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|  | <ul style="list-style-type: none"> <li>- Statement of Heritage Impact (Heritage 21, November 2023) (<b>Attachment Proposal A4</b>)</li> <li>- Arboricultural Impact Assessment (Glenn Holden, 6 November 2023) (<b>Attachment Proposal A5</b>)</li> <li>- Parking &amp; Traffic Assessment Report (Greys Australia Pty Ltd, 6 November 2023) (<b>Attachment Proposal A6</b>)</li> <li>- Preliminary Site Investigation (Progressive Risk Management, November 2023) (<b>Attachment Proposal A7</b>)</li> <li>- Affordability housing feasibility analysis (Hill PDA Consulting obo Waverley Council, August 2024) (<b>Attachment Proposal A8</b>)</li> <li>• Council Meeting Agenda 20 August 2024 (<b>Attachment Proposal B</b>)</li> <li>• Council Meeting Minutes 20 August 2024 (<b>Attachment Proposal C</b>)</li> </ul> <p><u>Proponent representations to DPHI proposal prior to Gateway determination</u></p> <ul style="list-style-type: none"> <li>• Representations from Mills Oakley obo proponent - PP-2024-104 - 50 Botany Street, Bondi Junction - 20 September 2024 (<b>Proponent Representations A</b>)</li> <li>• Further email and information from Mills Oakley obo proponent - PP-2024-104 50 Botany Street, Bondi Junction - 3 October 2024 (<b>Proponent Representations B</b>)</li> </ul> <p><u>Gateway assessment and Department attachments</u></p> <ul style="list-style-type: none"> <li>• Gateway determination - 11 October 2024 (<b>Attachment Gateway</b>)</li> <li>• Gateway assessment report - 11 October 2024 (<b>Attachment Gateway Report</b>)</li> <li>• DPHI request from addition information for the Gateway review request sent to Willowtree Planning – 10 December 2025 (<b>Attachment RFI - A</b>)</li> <li>• DPHI request for Gateway review application from sent to Willowtree Planning - 19 December 2024 (<b>Attachment RFI – B</b>)</li> <li>• DPHI letter to Willowtree Planning (obo Proponent) in response to request for Gateway review (PP-2024-104) – 22 January 2025 (<b>Attachment DPHI Response A</b>)</li> <li>• DPHI letter to Waverley Council response to request for Gateway review (PP-2024-104) – 22 January 2025 (<b>Attachment DPHI Response B</b>).</li> </ul> |
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## Council's views

### Details of justification

On 2 April 2025 Council staff submitted a response to the Gateway review request (GR-2024-13) (**Attachment Council Submission A & B**). Key matters raised by Council staff in response to the Gateway review request are:

- Council notes the *Waverley Affordable Housing Contributions Scheme* (AHCS) applies to the entire Waverley LGA and identifies how contributions can be levied. For planning proposal sites, the levy is to be calculated as a percentage across the whole development in accordance with the market value of residential floorspace at the time of the planning proposal being assessed and before a Gateway Determination. Council considers the proposed mechanism to include a site-specific clause in the WLEP is both lawful and appropriate for the circumstances.
- Council states that the proposal is consistent with the proposed '*Affordable housing contributions on Planning Proposal sites*' additional local provision and supporting schedule, which was deferred from the making of the Waverley LEP 2012 (Amendment No.25) until such time there was land to list in the Schedule as publishing a blank schedule is not consistent with the current legal drafting conventions for LEPs.
- Council contends that it has not mischaracterised the proposal as Council officer's reports have clearly described that the proponent-initiated proposal sought to provide 'a contribution toward affordable housing' and that the proposal has been progressed by Council in line with best practices, Waverley's Affordable Housing Contributions Scheme and previously implemented AHCS proposal, and the LEP Plan Making Guidelines.
- Council notes that it is standard practice for Council to take carriage of a proponent-initiated proposal and refine the proposal in a way it sees appropriate, as the LEP Making Guideline provides that "*A planning proposal can be changed prior to a council decision or during the council meeting. If this occurs, the planning proposal should be updated following the council decision and prior to referral of the planning proposal to the Department for a Gateway determination*".
- Council highlights that both DPHI, Council and its Local Planning Panel have supported the progression of the proposal and applying an affordable housing contribution.
- Council's AHCS sets at 10% target for sites receiving uplift via a planning proposal and considers the proposal would receive value uplift from the proposed medium density residential rezoning.
- Council states that it has undertaken a robust, transparent and evidence-based process to determine an appropriate feasible contribution in close consultation with the proponent and in line with the relevant guidelines, and notes that it has been in negotiations with the proponent since early 2024 in this regard.
- Council's submission provides an overview of the process undertaken to date to determine the proposed affordable housing contribution, which has included:
  - a Council commissioned feasibility study prepared by Hill PDA in 2024 based on the concept scheme and industry benchmark rates
  - Council discussions with the proponent regarding the draft feasibility report
  - a Quantity Surveyor peer review of building costs

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|  | <ul style="list-style-type: none"> <li>- Hill PDA's review of the Quantity Surveyor report, as well as the peer review of the feasibility study and assessment provided by the proponent.</li> <li>• Council states that the assumptions which informed the Hill PDA feasibility study have been adequately justified and are based on industry best practice.</li> <li>• Council considers the proponent's contention that <i>"Council seek to impose a contribution rate which is almost 40% higher than the rate identified in Council's own feasibility report"</i> is due to a simple misunderstanding. Council is of the view that the contribution must align with Waverley's published AHCS rates and states that:<br/><br/><i>"To equate the viable contribution (of \$1,652,738) to our published AHCS rates of \$21,000/sqm for Bondi Junction, the contribution translates to 9.27% of total gross floor area (\$1.65m/ \$21,000). This means that 9.27% of total gross floor area is to be dedicated to affordable housing as part of any future development application as in-kind floor space or as a monetary contribution" (p.6).</i></li> <li>• Council notes that the proponent's financial offers have varied throughout the planning proposal process and is of the opinion the proponent has not been transparent regarding the demolition and construction costs.</li> </ul> <p>Council's submission in response to the Gateway review request is provided in <b>Attachment Council Submission A &amp; B.</b></p> |
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## Assessment summary

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| <b>Department's assessment</b> | <p>The Department's position regarding the planning proposal remains unchanged, and it is recommended that the planning proposal proceed without amendment.</p> <p>Waverley Council is the planning proposal authority responsible for preparing and progressing the subject planning proposal and it was submitted for Gateway assessment on 29 August 2024.</p> <p>On 11 October 2024, a Gateway determination (<b>Attachment Gateway</b>) was issued by the Director, Local Planning (North, East and Central Coast), as delegate of the Minister for Planning and Public Spaces, who determined that the planning proposal should proceed subject to conditions for the following reasons:</p> <ul style="list-style-type: none"> <li>• The proposal is generally consistent with the relevant overarching state and local strategic plans and policies and ministerial directions, and inconsistencies have been adequately justified.</li> <li>• The proposal will facilitate residential development on underutilised land and will support ongoing use of the telecommunications tower on the eastern part of the site.</li> <li>• The proposal will support the provision of affordable housing in the Waverley LGA.</li> <li>• The proposal will not result in any adverse environmental, social or economic impact.</li> </ul> <p>Related to the subject planning proposal is planning proposal PP-2023-2221 which was prepared by Council to implement the Waverley Affordable Housing Contributions Scheme 2020 (AHCS) by amending the LEP to introduce a 1% levy on certain residential development and provide a mechanism to set site-specific contribution rates for planning proposal sites receiving residential uplift. Waverley LEP 2012 (Amendment No.25) came into effect in August 2024. However, during the finalisation of PP-2023-2221, the proposed 'Affordable housing contributions on Planning Proposal sites'</p> |
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additional local provision and supporting schedule was deferred from the making of the LEP until such time as there is land to list in the Schedule and thereby have a purpose for the proposed provision to give effect to. The subject planning proposal states that it intends to activate this provision in accordance with its adopted AHCS Policy.

A Gateway condition (1(a)) required that the planning proposal was updated prior to consultation to include a plain English explanation of how the provision will apply to the site and a disclaimer that final wording will be subject to Parliamentary Counsel drafting. This is an administrative condition to provide abundant clarity during public exhibition about how the proposed affordable housing contribution clause and supporting schedule would apply to the subject site and operate.

The Gateway determination authorised Council to exercise the functions of the local plan-making authority (LPMA) for this proposal as it relates to a local planning matter.

The proponent has previously made representations to Council and the Department regarding the proposed affordable housing contribution rate, mechanism for applying it and the process for assessing planning proposals. A meeting was held between DPHI's Local Planning Team and representatives of the proponent and landowner to discuss this matter on 8 October 2024 (**Attachment Proponent Representations A & B**).

The Department was satisfied at Gateway that the proposal and Gateway determination report adequately considered the matters raised as required by the LEP Making Guidelines and the *Environmental Planning and Assessment Act 1979*.

#### **Gateway review request – GR-2024-13**

Following careful consideration of the Gateway review request justification and supporting documentation submitted by Willowtree Planning Pty Ltd in 2024 in respect of the Gateway determination for PP-2024-104, the Director, Local Planning (North, East and Central Coast) at the Department of Planning, Housing and Infrastructure, as delegate of the Minister for Planning and Public Spaces, determined on 22 January 2025 to uphold the Gateway determination for the planning proposal (PP-2024-104) without amendment as Willowtree Planning had not provided adequate information to provide justification for the Gateway review.

The rationale for the Department's decision is outlined below:

- *The Gateway review request is ineligible as it seeks to appeal an administrative condition 1(a) of the Gateway determination, on the grounds that the proponent objects to the proposed affordable housing contributions rate proposed for the site, which is a component of the planning proposal that does not form part of the Gateway determination conditions.*
- *The review request does not provide adequate justification as to why Condition 1(a) of the Gateway is considered inappropriate and should be reconsidered.*
- *The planning proposal adequately demonstrates strategic and site-specific merit and any inconsistencies with the applicable section 9.1 Directions have been justified in accordance with the terms of the Directions.*
- *The planning proposal will support the delivery of housing on underutilised land, ongoing use of the telecommunications tower on the eastern part of the site, and supply of affordable housing in the Waverley LGA.*

The Department notified Willowtree Planning and Council of this decision on 22 January 2025 (**Attachment DPHI Response A & B**).

Subsequently on 21 February 2025 Mills Oakley submitted additional information to support the Gateway review (**Attachment Additional Information**).

The Department has carefully considered the Gateway review request justification submitted by Willowtree Planning Pty Ltd and supplementary information submitted by Mills Oakley in respect of the Gateway determination for PP-2024-104.

However, the Department's position remains unchanged and recommends that the Gateway for PP-2024-104 be upheld without amendment to allow the planning proposal to proceed. The rationale for the Department's views is as follows:

**The Gateway review request (GR-2024-13) seeks to appeal an administrative condition**

- The LEP Making Guideline (August 2023) stipulates that a Gateway review may be requested when a Gateway determination *"Imposes conditions (other than consultation requirements) in the Gateway determination or imposes conditions that requires variation to the proposal, for which a proponent and/or council thinks should be reconsidered"* (p.43).
- The Department notes that Condition 1(a) of the Gateway determination is an administrative condition which seeks to provide abundant clarity during public exhibition about how the proposed *'Affordable housing contributions on Planning Proposal sites'* additional local provision and supporting schedule would apply to the subject site. Specifically, the condition requires inclusion of a plain English explanation of how the provision will apply to the site and a disclaimer that final wording will be subject to Parliamentary Counsel drafting.
- Administrative conditions such as this are standard practise to help ensure that information is communicated in plain English rather than planning language so it is easier for members of the community to understand the intended effects of the planning proposal.
- The Gateway review is premised upon the proponent's objection to the proposed AHC rate for the site and seeks amendment to the Gateway condition to remove the AHC element from the planning proposal entirely. The additional information submitted by Mills Oakley in support of the Gateway review request provides justification for why it considers Condition 1(a) of Gateway to be inappropriate, as the proponent's request for a planning proposal did not seek to include a new site-specific provision in the Waverley LGA for the payment of an affordable housing contribution ('AHC').
- The Department is of the view that the matters raised pertain to the merit of a component of the planning proposal rather than the specific requirements of Condition 1(a) of the Gateway determination. A Gateway review where the Gateway determination is to proceed is not a merit review of the planning proposal but of the specific requirements of the Gateway condition(s).

**Council is the Planning Proposal Authority and may amend the proposal at any time**

- Waverley council is the planning proposal authority (PPA) for the subject planning proposal. Under s.3.33 of the *Environmental Planning and Assessment Act 1979* the PPA is responsible for preparing the planning proposal and under section 3.35 the PPA can amend the planning proposal at any time. The LEP Making Guideline also states that:  
*"The PPA may vary a proposal at any time during the LEP making process or request the Minister (or delegate) to determine that the matter not proceed. Variations may be necessary to:*
  - *improve the intended outcome of the proposal*
  - *respond to issues raised in submissions by the local community, an authority or a government agency*
  - *further mitigate the impacts of the proposal"* (Refer to p.41 of the LEP Making Guideline).

- A key point made by Mills Oakley in support of the Gateway review request is that “*Council has mis-characterised the PP in the reports to the Panel and Department by making it appear that the AHC mechanism (which is sought to be inserted into the WLEP) was proposed by the Proponent. The Proponent has never sought by its PP to include an additional local provision for an AHC scheme*” (**Attachment Additional Information**, p.3).
- The Department notes that while the request for the proposal was proponent initiated, Waverley Council is the PPA for the subject planning proposal and has the authority to amend the proposal at any time in accordance with the provisions of the *EP&A Act 1979* and requirements of the LEP Making Guidelines (August 2023).
- The subject planning proposal intends to activate a provision that was deferred as part of the finalisation Waverley Affordable Housing Contribution Scheme Implementation Planning Proposal (PP-2023-2221). The proposed ‘*Affordable housing contributions on Planning Proposal sites*’ additional local provision and supporting schedule was publicly exhibited in 2023, and was deferred from the making of the Waverley LEP 2012 (Amendment No.25) pursuant to section 3.36(3) of the Act, until such time there was land to list in the Schedule and thereby have a purpose for the proposed new local provision to give effect to. This matter is further explained in Section 2 of the Department’s Gateway assessment report for the proposal (PP-2024-104) (**Attachment Gateway Report**)
- The Department’s role in the process is to assess the planning proposal as submitted for Gateway determination in accordance with the requirements of the Act and LEP Making Guideline. The AHC element was included in the planning proposal document prepared by Council as a PPA and is therefore considered part of the planning proposal.

**The proposal has been prepared in accordance with the requirements of the Guideline for Developing an Affordable Housing Contribution Scheme**

- The Department’s ‘*Guideline for Developing an Affordable Housing Contribution Scheme*’ (*the Guideline*) (February 2019) provides guidance on the preparation of affordable housing contribution schemes and to fulfill legislative requirements, and states that a scheme should be applied where an uplift in land value is proposed to be created through zoning to ensure contributions are drawn from the increase in land value generated by the rezoning.
- Section 7.32 of the *EP&A Act 1979* allows councils to levy contributions for affordable housing if a State environmental planning policy (SEPP) identifies a need for affordable housing in the LGA. In February 2019, SEPP 70 was expanded to include all LGAs across the state. SEPP 70 has since been repealed with same provisions incorporated into the SEPP (Housing) 2021.
- Under section 7.32(3)(b) of the *EP&A Act 1979*, any condition imposed on a development consent must be authorised to be imposed by a LEP and be in accordance with an affordable housing contribution scheme for dedications or contributions set out in, or adopted by, the LEP.
- The planning proposal seeks to set a 9.27% affordable housing contributions levy contribution in accordance with the Waverley Affordable Housing

Contribution Scheme 2023. This would enable a condition to be imposed on any future development consent requiring a contribution in line with the LEP.

- As noted in the Department's Gateway Assessment Report, the site is being rezoned for residential purposes via this proposal, and that the proposed affordable housing contribution rate is supported by the affordable housing feasibility analysis undertaken by Hill PDA on behalf of Council in August 2024.
- This was considered adequate by the Department in regards to the requirements of the *Guideline for Developing an Affordable Housing Contribution Scheme* (February 2019), as the proposed affordable housing contribution rate was considered adequately justified and supported by satisfactory feasibility testing, and Council has an AHCS which sufficiently demonstrates a need for affordable housing in the LGA.

**The proposal has strategic merit because it will support the delivery of housing and supply of affordable housing in the Waverley LGA**

- The planning proposal will support the delivery of housing on underutilised land, the ongoing use of the telecommunications tower on the eastern part of the site, and supply of affordable housing in the Waverley LGA.

This is particularly important given that all levels of Government now have a shared responsibility to address the National housing crisis, with the NSW Government committed to delivering at least 377,000 new well-located homes across the state by 2029, to align with the Federal Government's National Housing Accord initiative.

The NSW Government has recently issued local housing targets to councils in Greater Sydney under section 3.4(7) of the Act, including a 5-year housing target of 2,400 new dwellings between 1 July 2024 to 30 June 2029 for Waverley LGA, which reflects the government's commitment for more well-located housing supply around existing infrastructure.

- Section 7.32 of the *EP&A Act 1979* allows councils to levy contributions for affordable housing and any condition imposed on a development consent must be authorised to be imposed by a LEP. The Department's Guideline for Developing an AHCS states that a scheme should be applied where an uplift in land value is proposed to be created through zoning, to ensure contributions are drawn from the increase in land value generated by the rezoning.

Waverley Local Environmental Plan 2012 (Amendment No 25) was made under section 3.36(2)(a) of the *EP&A Act 1979*, to enable the collection of affordable housing contributions for specified residential development.

The proposal will provide opportunity to increase the supply of affordable housing in the Waverley LGA via an affordable housing levy contribution in accordance with the Waverley Affordable Housing Contribution Scheme 2023.

**The proposal has demonstrated strategic merit because it is consistent with the strategic planning framework and inconsistencies with the s.9.1 directions have been justified**

- The Department considers the planning proposal adequately demonstrates strategic merit, including consistency with:

- The Eastern City District Plan (2018), including *Planning Priority E5* and *Planning Priority E6*, as the proposal will contribute to the supply of housing on a site which is accessible to jobs and services in the Bondi Junction strategic centre, transport, social infrastructure, open space and recreational areas; provide opportunity to increase the supply of affordable housing in the Waverley LGA; and ensure the Waverley LEP 2012 accurately reflects heritage in the Waverley LGA. The proposal also seeks to address the target of 5-10% affordable housing outlined in the plan.
- The Waverley Local Strategic Planning Statement (March 2020), Waverley Local Housing Strategy and Waverley 2032 (Community Strategic Plan), as the proposal responds to the change of circumstances on the site; will facilitate the redevelopment of an underutilised site to support the delivery of housing in a well-located area, while enabling the ongoing use of the eastern part of the site for telecommunications purposes; and will allow for the collection of contributions for affordable housing.
- The proposal is consistent with the relevant section 9.1 Directions, with the exception of Direction 1.4 Site Specific Provisions and Direction 3.2 Heritage Conservation. The Department considers the inconsistency of the proposal with these Directions to be of minor significance and adequately justified, as discussed in Section 3.5 of the Gateway Assessment Report (**Attachment Gateway Report**).

**The proposal has demonstrated site-specific merit**

- The site is located within an established urban area that is not known to contain any critical habitat or threatened species, populations or ecological communities, and is not identified in the proposal as being flood affected.
- The planning proposal adequately demonstrates site-specific merit as it seeks to rezone the site for residential purposes and apply a minimum lot size provision consistent with the surrounding residential area. The proposal will not impact the overall permissible bulk and scale as it does not seek to alter the existing FSR or height controls.
- The proposal is supported by an Urban Design Analysis (Smith & Tzannes, December 2023) which demonstrates that a concept scheme for multi-dwelling housing on the site would be capable of complying with the development controls and would be compatible with the scale and form of development on the surrounding land.
- The Department considers that any potential impacts relating to parking, amenity, tree canopy, biodiversity habitat and land contamination issues could all be appropriately addressed through the design and application of development controls at any future DA stage.

**Recommendation:**

The Department has carefully considered the strategic and site-specific merits of the proposal and recommends that the planning proposal should proceed without amendment.

The proponent has not provided adequate justification to warrant an amendment to the Gateway determination.

## COMMISSION'S RECOMMENDATION

**Reason for review: A determination has been made that has imposed requirements (other than consultation requirements) or makes variations to the proposal that the proponent or council thinks should be reconsidered.**

|                          |                          |  |
|--------------------------|--------------------------|--|
| <b>Recommendation</b>    | <input type="checkbox"/> | The planning proposal should not proceed past Gateway.   |
|                          | <input type="checkbox"/> | <input type="checkbox"/> no amendments are suggested to original determination.                  |
|                          | <input type="checkbox"/> | <input type="checkbox"/> amendments are suggested to the original determination.                 |
| <input type="checkbox"/> |                          | The planning proposal should proceed past Gateway in accordance with the original Determination. |

**Any additional comments:**